



## DEPARTMENT OF PUBLIC SAFETY POLICIES & PROCEDURES



POLICY NUMBER	
ADM: 34	
EFFECTIVE DATE: 05/03/2013	ORIGINAL ISSUED ON: 11/30/2001
SUBJECT: ANTI-DISCRIMINATION, HARASSMENT, AND RETALIATION	REVISION NO: 5

### 1.0 PURPOSE

The purpose of this policy is to define discrimination, hazing, harassment, and retaliation; to provide procedures for the reporting and investigation of discrimination, harassment, and retaliation claims; and to ensure that violations are prevented and fully remedied.

### 2.0 POLICY

It is the policy of the Department of Public Safety to vigorously enforce anti-discrimination laws. The DPS will not tolerate issues involving discrimination or harassment based on an individual's real or perceived age, race, sex, national origin, disability, color, religion, sexual orientation, veteran status, marital status, gender identity, spousal affiliation, or genetic information. Retaliation because of opposition to discrimination, harassment, or participation in the investigation of a complaint will not be tolerated.

### 3.0 APPLICABILITY

This policy applies to all employees of the Department of Public Safety (DPS) regardless of their employment relationship with the Department. This policy further extends and applies to all applicants for employment, contractors, employees or clients of DPS sub-recipients, and all clients of the Department of Public Safety.

### 4.0 REFERENCES

- A. Personnel Board Rule 1.7.6.13 NMAC
- B. Title VII of the Civil Rights Act of 1964 as amended
- C. The New Mexico Human Rights Act, as amended
- D. Americans with Disabilities Act, as amended
- E. Civil Rights Act of 1991
- F. CALEA Chapter 26 - Disciplinary Procedures
- Added. → G. Genetic Information Nondiscrimination Act of 2008 (GINA)
- H. Lilly Ledbetter Fair Pay Act of 2009
- I. The Rehabilitation Act of 1973 Section 504
- J. Age Discrimination Act of 1975
- K. Title IX of the Education Amendments of 1972
- L. Omnibus Crime Control and Safe Streets Act of 1968

### 5.0 DEFINITIONS

- A. Chief** – DPS Deputy Secretary of Operations, Chief of the New Mexico State Police.
- B. Client** – Any person or organization requesting or receiving services from the Department of Public Safety or a DPS sub-recipient.
- C. Complainant** – A person making an oral or written report of discrimination, sexual or racial harassment, or retaliation whether on their own behalf or on the behalf of another.
- D. Department** – Department of Public Safety, also referred to as DPS.
- E. Discrimination** – The *actual behavior* towards group members or individuals who possess or are perceived as possessing qualities characteristic of the group based on: age; race; sex; national origin; disability; color; religion; sexual orientation; veteran status; marital status; gender identity; genetic information; or spousal affiliation. It involves excluding or restricting members of one group from opportunities that are available to other groups.
- F. EEO Officer** – The DPS Equal Employment Opportunity (EEO) Officer is the individual designated by the Secretary of the Department as responsible for the investigation of all sexual and racial harassment and retaliation complaints and all other complaints of discrimination and the coordination of anti-discrimination, sexual and racial harassment, and retaliation training. The Secretary of the Department may designate as many EEO Officers as deemed necessary. All EEO Officers will receive training in the recognition, investigation, and mediation of all types of discrimination, harassment, and retaliation complaints as described in this policy. The EEO Officer is also designated as the coordinator responsible for overseeing complaints against DPS sub-recipients.
- G. Employee** – For purposes of this policy only, employee shall be defined as a person employed in a position in the Department, including full, part-time and probationary employees, recruits, and applicants for employment with the DPS. Employees of DPS sub-recipients are covered by the term.
- H. Genetic Information** – Information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about the manifestation of a disease or disorder in an individual's family members (i.e. family medical history).
- I. Hazing** – a form of harassing conduct whereby an employee, regardless of service or rank, without proper authority causes another employee to suffer or be exposed to any activity which is cruel, abusive, humiliating, oppressive, demeaning, or harmful. Soliciting or coercing another to perpetrate any such activity is also considered hazing. Hazing need not involve physical contact by employees; it can be verbal or psychological in nature. Actual or implied consent to acts of hazing does not eliminate the culpability of the perpetrator.

Clarification added.

Hazing does not include command-authorized or operational activities; the requisite training to prepare for special operations missions, authorized physical training, or the mission of the Law Enforcement or State Police Academy.

- J. Racial Harassment** – Is a form of race discrimination. It is prohibited by federal law, state law, and this policy. Unwelcome racial comments and derogatory or adverse treatment that is racial in nature or motivated by racial animus and other verbal or physical conduct of a racial nature constitute racial harassment when:
1. Submission to such conduct and/or comments is made either explicitly or implicitly a term or condition of an individual's employment or the receipt of services; or
  2. Submission to, or rejection of, such conduct by an individual is used as the basis for employment or service decisions affecting such individual; or
  3. Such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive work or service environment.
  4. For purposes of this policy, the term racial harassment includes discrimination on the basis of national origin or ethnicity.
  5. Racial Harassment can involve individuals being harassed either by members of the same or another racial or ethnic group. Racial harassment can involve a harasser in a position of greater authority than the person being harassed; individuals in positions of lesser or equal authority can also be found responsible for engaging in prohibited harassment.
  6. While racial harassment encompasses a wide range of conduct, racial harassment includes racially oriented conduct that is sufficiently pervasive or severe to unreasonably interfere with an employee's job performance or create an intimidating, hostile, or offensive environment for employees or clients.

Clarification added.

- K. Respondent** – The individual or organization accused of discrimination, harassment, or retaliation in an oral or written complaint made to the EEO Officer or any supervisor.
- L. Retaliation** – Retaliation is prohibited by federal law, state law, and this policy. Retaliation occurs when an individual makes a report, files a formal charge, or speaks up against conduct which s/he reasonably believes to constitute discrimination, harassment, or when an employee cooperates in good faith in an investigation, proceeding or hearing of an allegation of discrimination or harassment and then is treated negatively by his or her employer or another employee because of his or her complaint or report.
- M. Secretary** – The Cabinet Secretary of DPS.
- N. Sexual Harassment** – Sexual harassment is a form of sex discrimination. It is prohibited by federal law, state law, and this policy. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or receipt of services; or

- Clarification added.
- 2. Submission to or rejection of such conduct by an individual is used as the basis for employment or service decisions affecting such individual; or,
  - 3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working or service environment.
  - 4. Sexual harassment can involve males or females being harassed by members of either sex. Sexual harassment can involve a harasser in a position of greater authority than the person being harassed; individuals in positions of lesser or equal authority can also be found responsible for engaging in prohibited harassment.
  - 5. Sexual harassment includes sexually oriented conduct that is sufficiently pervasive or severe to unreasonably interfere with an employee's job performance or create an intimidating, hostile, or offensive environment for employees or clients.

**O. Sub-recipient** – Grantees of the Department of Public Safety who are implementing funding from the United States Department of Justice.

**P. Supervisor** – For purposes of this policy, a supervisor is any law enforcement or civilian employee of the DPS who is charged with overseeing the work assignments of one or more individuals, whether civilian personnel or commissioned officers, as well as all uniformed employees holding the rank of sergeant or higher, and the Deputy Secretary and Secretary of the DPS. Persons not specifically designated supervisors who have the authority to direct the day-to-day activities of one or more individuals may be considered supervisors under this policy.

## 6.0 PROCEDURE

### A. General Guidelines

- Clarification added.
- 1. Discrimination, harassment, and retaliation in the workplace or in connection with the delivery of services are illegal and shall not be tolerated by the DPS. The DPS is committed to the vigorous enforcement of anti-discrimination laws and this policy and has adopted a **zero tolerance policy** for all discrimination, harassment, and retaliation. This policy will be enforced by taking appropriate disciplinary action, up to and including termination, against any individual who engages in discrimination, harassment, or retaliation and against supervisors who were, or should have been, aware of the situation and did not report or respond to it.
  - 2. All individuals shall promptly report discrimination, hazing, harassment, and retaliation in accordance with the procedures described below. Supervisors must take the steps set forth in this policy in response to any written or oral report. Retaliation against any individual for making a good faith report regarding conduct which s/he reasonably believes to be discrimination, harassment, or for otherwise opposing what s/he believes to be unlawful discrimination is illegal and will not be tolerated. Retaliation against any individual for participating in good faith in an investigation, proceeding, or hearing of a complaint of discrimination or harassment is also illegal and will not be tolerated.

- Clarification added.
- 3. Employees are prohibited from discrimination against, hazing, harassing, and retaliating against other employees whether or not the incidents occur on the Department's or a DPS sub-recipient's premises and whether or not the incidents occur during working hours. Employees are similarly prohibited from discriminating, harassing, or retaliating against clients of the Department or of a DPS sub-recipient, who have the right to apply for and receive services and benefits free from any form of discrimination, harassment, or retaliation.
  - 4. Consensual sexual or romantic relationships between DPS employees are strongly discouraged and prohibited if one employee has supervisory authority over the other employee.
  - 5. All employees have a responsibility to prevent all forms of discrimination, harassment, and retaliation in the workplace and in the delivery of services. Specific responsibilities of employees are detailed further in this policy.
  - 6. Employees and clients have a right to report any behavior which they believe to be discrimination, harassment, or retaliation to any supervisor or the EEO Officer in accordance with this policy and to have their allegations investigated and promptly resolved.

### B. Reporting Procedures

- Clarification added.
- 1. All incidents of sexual or racial harassment, inappropriate sexually or racially oriented conduct, hazing, retaliation, or any other incidents of discrimination shall be reported as provided in this policy.
  - 2. Individuals shall bring complaints of any form of discrimination, harassment, or retaliation, whether against an employee of the DPS or an employee of a DPS sub-recipient, to the attention of the DPS EEO Officer or designee, or any DPS supervisor. Any individual who believes that s/he has been subjected to discrimination, harassment, retaliation, or is aware of such conduct shall report the alleged conduct as soon as possible or no greater than 300 days from the last alleged incident.
  - 3. An individual who is subject to discrimination, harassment, retaliation, or who is aware of such conduct within the DPS, or a DPS sub-recipient shall make either an oral or written report to the DPS EEO Officer or any DPS supervisor.
  - 4. Individuals are not required to follow the chain of command in reporting discrimination, harassment, or retaliation to supervisory personnel. If the harasser is the employee's direct supervisor, the employee can report the incident/s to any supervisor, or directly to the DPS EEO Officer or designee.
  - 5. Non-supervisory DPS employees receiving a report of discrimination, harassment, or retaliation from an individual shall direct that individual to a DPS supervisor or the DPS EEO officer.

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6. Employees and clients may be able to stop or prevent discrimination, harassment, or retaliation by immediately and directly expressing their disapproval of an individual's inappropriate conduct. Individuals are not required to make a report or complaint to the individual they believe to be discriminating, harassing, or retaliating against them.
7. Complaints should be reported as soon as possible after an incident of alleged discrimination, harassment, or retaliation. To ensure a prompt and thorough investigation the complainant shall provide as much of the following information as possible. A complainant shall make an oral or written complaint, whether or not all of the following information is known:
  - a. The name, division, and position of the person(s) allegedly causing the discrimination, harassment, or retaliation.
  - b. A description of the incident(s) including the date(s), time(s), location(s), and the presence of any witnesses.
  - c. Whether the complainant believes that the incident(s) had any effect on the complainant's position, salary, benefits, promotional opportunities, or other terms or conditions of his or her employment or in the complainant's or any other persons receipt of services.
  - d. The names of others who might have been subject to the same or similar discrimination, harassment, or retaliation.
  - e. Whether the complainant has taken any steps to try and stop the harassment, retaliation, or other discrimination.
  - f. Any other information the complainant believes to be relevant to the harassment, retaliation, or discrimination complaint.
8. Any supervisor who receives a written or oral report of discrimination, harassment, or retaliation shall immediately forward the report to the DPS EEO Officer, regardless of the supervisor's assessment of the veracity of the complaint.
9. Neither supervisors nor the DPS EEO Officer may require an individual to reduce his or her complaint to writing. The supervisor or DPS EEO Officer shall immediately reduce any oral complaint to writing on the Discrimination, Harassment, and Retaliation Complaint Form attached as Exhibit B and have the complaining employee sign the form. Supervisors shall take this step before forwarding the complaint to the DPS' EEO Officer. In the event that an employee refuses to sign the Discrimination, Harassment, and Retaliation Complaint Form, the supervisor or EEO Officer shall so note that on the form and process it as though it had been signed.

10. Complaints against the EEO Officer should be reported directly to a supervisor or the Secretary, who shall follow the investigation procedures set out in this Anti-discrimination, Harassment, and Retaliation Policy for the EEO Officer.
11. For incidents that are not civil rights based follow the procedures in *ADM: 03 Grievances*.

Added.

### C. Responsibilities of All Employees

1. All employees shall report discrimination, hazing, harassment, and retaliation about which they are aware.
2. All employees share responsibility for ensuring that the DPS is a workplace free of all discrimination, harassment, and retaliation.
3. DPS employees are subject to discipline, up to and including termination, for engaging in conduct prohibited under this policy or for engaging in conduct that assists or encourages others in engaging in discrimination, harassment, or retaliation.
4. If employees or clients of the DPS, or DPS sub-recipients, believe that they have been subjected to discrimination, harassment, or any unwanted sexual advance, they shall:
  - a. Make their unease and/or disapproval directly and immediately known to their harasser; *if they are comfortable* doing so.
  - b. Report the incident and any incidents of retaliation to a supervisor or the Department's EEO Officer.
5. All incidents of discrimination, harassment, inappropriate sexual or racial conduct, or retaliation should be reported regardless of their seriousness.
6. All employees are required to cooperate truthfully and honestly, when requested, with any investigation into allegations of any type of discrimination, harassment, or retaliation.
7. The performance evaluations of all employees shall evaluate compliance with this policy. When deciding whether an employee should receive a promotion, award, or other performance related benefit, DPS shall consider an employee's compliance with this policy. Individuals who believe they have been subjected to discrimination, harassment, or retaliation shall not be negatively impacted in their performance evaluations or in their receipt of performance related benefits as a result of their failure to report.

### D. Additional Supervisory Responsibilities

1. Supervisors **must** accept all reports of discrimination, harassment, and retaliation and forward those reports immediately to the EEO Officer, regardless of whether the reporting employee is someone over whom they have direct supervisory

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responsibility. Supervisors shall put any and all oral reports in writing on the Discrimination, Harassment, and Retaliation Complaint Form to be signed by the complainant except as provided in 6.0 (B) (10), before they are forwarded.

2. Supervisors must deal expeditiously and fairly with allegations or observations of discrimination, hazing, harassment, and retaliation by or against employees or clients whether or not there has been a written or oral complaint. A supervisor must:
  - a. Act promptly to notify their Division Director and the EEO Officer, who will advise the Secretary.
  - b. Take immediate corrective action against any individual under their supervision to prevent prohibited conduct from recurring.
3. A supervisor's warning to an employee, combined with appropriate follow-up supervision, training and/or monitoring of the employee's behavior, may be sufficient remedial action to prevent the occurrence of discrimination, harassment, or retaliation.
4. Supervisors shall report any individual who is not under their supervision and whom they are aware that has engaged in discrimination, harassment, or retaliation to the EEO Officer.
5. Supervisors shall regularly inspect the office area, district, sub district, and all other facilities under their supervision and immediately remove any explicit, suggestive, or offensive photographs, magazines, letters, postcards, posters, screensavers, or other related materials based on an individual or group's characteristic which are enumerated in this policy. The supervisors shall draft an **intra-departmental correspondence (IDC)** identifying the employee found responsible for displaying such materials and forward it to the EEO Officer for further investigation, if necessary, and appropriate disciplinary action.

A supervisor shall **not**:

- a. Discourage any individual from making a report of discrimination, harassment, or retaliation.
  - b. Refuse to accept a report or fail to reduce it to writing on the Discrimination, Harassment, and Retaliation Complaint Form.
  - c. Fail to forward any report to the EEO Officer, whether or not signed by the complainant.
  - d. Insist that any report be put in writing by the complainant.
6. Performance evaluations for supervisors shall evaluate compliance with this policy as well as enforcement and communication of this policy with respect to employees under their supervision.

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7. Supervisors shall be subject to discipline, up to and including dismissal if they were, or should have been, aware of discrimination, hazing, harassment, or retaliation and did not report and/or respond to it as required by this policy.
8. Supervisors shall ensure that employees under their supervision are in compliance with this policy. Supervisors shall enforce and communicate this policy to employees under their supervision.

### **E. EEO Officer Responsibilities**

The EEO Officer is responsible for the following:

1. Accept any and all complaints of discrimination, hazing, harassment, or retaliation against employees of the DPS or DPS sub-recipients.
2. Ensure that both the complainant and the respondent are aware of the seriousness of a complaint regarding discrimination, harassment, or retaliation. In no event shall the EEO Officer attempt to discourage an individual from making a complaint.
3. Explain the Department's anti-discrimination, harassment, and retaliation policy and investigation procedures to the complainant and the respondent, and will provide them with a copy of this policy and a copy of the procedure for investigating and resolving complaints.
4. Refer the complainant and/or the respondent to the Employee Assistance Program for counseling and referral services, if appropriate.
5. Notify the Department's Cabinet Secretary, if criminal activities are alleged.
6. Conduct an impartial investigation of complaints of alleged discrimination, harassment, or retaliation and will prepare a written report and recommendation to be submitted to the Secretary or Chief, in accordance with this policy.
7. The EEO Officer will notify the complainant, in writing, of the outcome of the investigation.

### **F. Discipline**

1. Any employee found to have engaged in discrimination, hazing, harassment, retaliation, or to otherwise be in violation of this policy shall be subject to disciplinary action up to and including termination.
2. Individuals who believe they have been subjected to discrimination, hazing, harassment, or retaliation, who fail to report it, shall not be subject to discipline.
3. Disciplinary action is mandatory when the EEO Officer determines that the accused individual has engaged in discrimination, hazing, harassment, or retaliation. That determination will be based on the totality of the circumstances involved.

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4. An employee is not entitled to progressive discipline for the first, or subsequent, incidence of discrimination, harassment, or retaliation and employees are advised that an initial incident of discrimination, sexual or racial harassment, or retaliation may result in discipline up to and including termination as determined by the Chief or the Secretary of DPS.
  - a. For commissioned law enforcement personnel, the nature of the disciplinary action shall be determined by the Chief after consultation with the EEO Officer.
  - b. For civilian personnel, the nature of the disciplinary action shall be determined by the Secretary of DPS after consultation with the EEO Officer.
5. The mandatory minimum discipline for an employee found to have engaged in discrimination, hazing, harassment, or retaliation is a written reprimand. The maximum discipline for an employee found to have engaged in discrimination, sexual or racial harassment, or retaliation is termination. Persons who violate this policy may also be subject to civil damages or criminal penalties in accordance with state and federal laws.
6. If disciplinary action is to be taken against the EEO Officer, then the same procedures will apply except that the disciplinary action shall be determined by the Secretary of the DPS.
7. The enforcement of disciplinary action shall be subject to any rights to challenge disciplinary action in accordance with the DPS policy or other rules, regulations, or laws regarding discipline.
8. If the EEO Officer determines that a DPS sub-recipient has engaged in discrimination, hazing, harassment, or retaliation, the EEO Officer shall notify the sub-recipient's agency head and shall work with the agency head or a designee to resolve the finding of discrimination, harassment, or retaliation.

### **G. Right to Complain to Outside Agency**

1. In addition to the complaint procedures set forth in this policy, any individual has a right to file a complaint of sexual or racial harassment, other employment or delivery of services discrimination or retaliation with the New Mexico Human Rights Commission, Department of Labor, 1596 Pacheco Street, P.O. Box 4218, Santa Fe, NM 87502-4218 and the Equal Employment Opportunity Commission (EEOC), 505 Marquette NW, Suite 900, Albuquerque, NM 87102-2189.
2. A complaint of discrimination or retaliation must be filed with these agencies within a certain period of time after the alleged act of discrimination occurred to be timely under the federal and state statutes prohibiting employment discrimination.
3. Individuals complaining of discrimination, hazing, harassment, or retaliation by the DPS or a DPS sub-recipient in employment practices or the delivery of services may also file a complaint with the Office for Civil Rights; Office of Justice Programs; U.S. Department of Justice; 810 Seventh Street N.W.; Washington, DC 20531.

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### **H. Policy Training and Dissemination**

The Department of Public Safety will employ several methods for providing training on and dissemination of this policy.

#### **1. Internal Training and Dissemination**

- a. This policy will be posted on the Department of Public Safety's intra-net website; *The Insider*.
- b. A copy of this policy will be distributed to all supervisory personnel.
- c. This policy will be reviewed during annual supervisory training.
- d. Copies of this policy will be posted at the Human Resources Office distribution center.

#### **2. External Training and Dissemination**

- a. A copy of this policy will be posted on the Department of Public Safety's publicly available web site.
- b. All contractors, vendors, and sub-recipients that do business with the Department of Public Safety will be provided a copy of this policy.
- c. Copies of this policy will be made available to other law enforcement organizations statewide.
- d. Job applicants will be made aware that copies of the Department's policy are available upon request.
- e. Sub-recipients will be required to have copies of this policy available at their facilities.

## **7.0 ATTACHMENTS**

### **A. Sexual Harassment Examples**

### **B. Discrimination, Harassment, and Retaliation Complaint Form**

## **8.0 APPROVAL**

**APPROVED BY:** \_\_\_\_\_ s/ Gorden E Eden Jr. **DATE:** \_\_\_\_\_ May 03, 2013  
DPS Cabinet Secretary